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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,537	12/20/2000	Theo Postmes	I071 1010	1086

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EXAMINER
GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
1616	

DATE MAILED: 04/10/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/746,537	Applicant(s) POSTMES, THEO	
	Examiner Sharmila S. Gollamudi	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 February 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6-10 and 15-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-10 and 15-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Status of Application

Applicant's request for reconsideration of the finality of the rejection of the last Office action on the grounds that rejection of claim 6 was not necessitated by the amendments is persuasive and, therefore, the finality of that action is withdrawn. Claims 6-10 and 15-19 are included in the prosecution of this application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claims 15 and 16 respectively recite a compressed product comprising "a composition further comprising." It is not understood what this "composition" refers to or contains. One of ordinary skill in the art would not understand the metes and bounds of the instant claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6-9 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/07399 in view of von Stering-Krugheim (4273794).

WO 89/07399 discloses a compressed product for improving digestion containing 10-20% wheat bran, 30-40% wheat germ, and the amount of honey can be the equivalent to the mass of the dry ingredients (Note example 1 and pg. 3). The composition also contains hulled sunflower seeds.

WO does not specify the instant amount of honey.

Von Stering-Krugheim discloses compositions containing honey. The reference teaches the common use of honey in foods for its nutritional and medical effect. The reference disclose that honey has a high content of sweet tasting sugars which makes it unacceptable to many people since it is too sweet. Further limitation on the consumption of honey is that people are on a decreased carbohydrate diet and honey contains high content of carbohydrates. (Note col. 1, lines 15-55).

In the absence of showing criticality of the amount of honey, it is deemed obvious to one of ordinary skill in the art to manipulate the amount of honey in the composition. One would be motivated to do so since honey acts as a sweetener in the composition and depending on the desired taste of the product, honey is added accordingly, as taught by von Stering-Krugheim. Further motivation to decrease the amount of honey in WO's composition is to reduce the carbohydrate content of the bar, which allows those on diets to also consume the bar as taught by von Stering-Krugheim.

It is the examiner's position that the instant properties of the dependent claims are inherent property of honey unless the applicant demonstrates otherwise.

Claims 6-9 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/07399 in view of von Stering-Krugheim (4273794) and optionally in further view of Kerkvliet (journal of agricultural Research 35 (3/4): 110-117 (1996).

WO 89/07399 discloses a compressed product for improving digestion containing 10-20% wheat bran, 30-40% wheat germ, and honey where the mass of the dry products is equivalent to the mass of the honey (Note example 1 and pg. 3). WO teaches making the product at a temperature of 30 degrees Celsius (page 4). Von Stering-Krugheim teaches the common use of honey in foods.

The references do not specify the inherent properties of honey.

Kerkvliet teaches that natural occurring honey has the enzyme glucose oxidase. Upon dilution of honey with water, hydrogen peroxide is liberated which in turn inhibits the growth of bacteria. The reference teaches specific peroxide activities for specific honey types. Kerkvliet demonstrates the influences of processing on honey and determined excessive heating during processing decreases peroxide value. The reference demonstrates the instant peroxide activity at 20 degrees Celsius after 60 minutes and at 35 degrees Celsius after 30 minutes. (Note entire document)

Although the references do not teach the peroxide activity of the honey used, it is deemed obvious to one of ordinary skill in the art that the honey used by WO has the instant properties since Kerkvliet teaches the inherent properties of honey and that natural occurring honey has peroxide values. Further, in the absence of evidence to the contrary, WO does not teach excessively heating the honey, therefore WO's honey

would have the instant properties since Kerkvliet teaches that the only reason for a decreased peroxide value is due to excessive heating of honey during processing.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/07399 in view of von Stering-Krugheim (4273794), optionally in further view of Kerkvliet (journal of agricultural Research 35 (3/4): 110-117 (1996), in further view of Aoe et al (5112964).

As set forth above, WO teaches a honey composition for improving digestion. Von Stering-Krugheim teaches the conventional use of honey in food products. Kerkvliet teaches the inherent properties of honey.

WO does not teach cellulose as an additive in the composition.

Aoe et al teach dietary fibers such as hemicelluloses (found in wheat bran), pectin substances, and carboxymethylcellulose show physiological effects. These fibers prevent the absorption of toxic substances in the intestine and are removed with the elimination of the fiber. Further, the dietary fibers increase bowel movement. (Note col. 1, lines 1-35).

Further, It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate cellulose in WO's composition since Aoe teaches cellulose to have physiological advantages for the gastro-intestinal tract in aiding digestion and general health. One would be motivated to use another source of fiber such as carboxymethylcellulose (instant additive) to yield an additive effect.

Claims 6-10 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1,571,251 in view of Leach (5,612,074).

GB discloses a food composition containing 25% wheat bran, 20% honey, and dried apricots, among other components. The reference discloses that the addition of bran prevents constipation (col. 1, lines 20-25). GB discloses that the absence of cereal fiber is the cause of various diseases such as heart disease, intestinal aliments, cancer, obesity, etc. (col. 1, lines 35-50). GB prepares the mixture without heat (example 1).

GB does not teach the inclusion of wheat germ in the composition.

Leach teaches a nutrient fortified food bar containing dietary fiber, non-animal protein, carbohydrates, and sugars. Leach teaches adding about 38% of dietary fiber from various sources such as wheat germ, oatmeal, or dried fruits (apricots, cherries, dates, etc.) Further, Leach teaches wheat germ as a source of protein. (col. 3, lines 1-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include wheat germ into the nutritonal composition of GB since Leach teaches wheat germ not only provides dietary fiber but also provides protein. One would be motivated to do with the expectation of similar results since GB teach the use of other fiber sources such as dried fruits in the composition and Leach teaches that both wheat germ and dried fruits can be used as dietary fibers sources.

Note the limitation of 10 is met by GB's inclusion of dried fruit in the composition since fruit inherently contains pectin.

Claims 6-10 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1,571,251 in view of Leach (5,612,074) optionally in further view of Kerkvliet (journal of agricultural Research 35 (3/4): 110-117 (1996).

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The references do not specify the inherent properties of honey.

Kerkvliet teaches that natural occurring honey has the enzyme glucose oxidase. Upon dilution of honey with water, hydrogen peroxide is liberated which in turn inhibits the growth of bacteria. The reference teaches specific peroxide activities for specific honey types. Kerkvliet demonstrates the influences of processing on honey and determined excessive heating during processing decreases peroxide value. The reference demonstrates the instant peroxide activity at 20 degrees Celsius after 60 minutes and at 35 degrees Celsius after 30 minutes. (Note entire document)

Although the references do not teach the peroxide activity of the honey used, it is deemed obvious to one of ordinary skill in the art that the honey used by GB has the instant properties since Kerkvliet teaches the inherent properties of honey and that natural occurring honey has peroxide values. Further, in the absence of evidence to the

contrary, GB does not teach heating the honey, therefore WO's honey would have the instant properties since Kerkvliet teaches that the only reason for a decreased peroxide value is due to excessive heating of honey during processing.

Art of Interest

The examiner cites Paetzke's What is Honey as art of interest, which also teaches the inherent properties of honey. Paetzke teaches that on average honey has a water content of 17.1% water and has hydrogen peroxide values. (Note page 6)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

MICHAEL G. HARTLEY
PRIMARY EXAMINER

SSG

April 7, 2003